NO. 21287

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCIS JACOB YOUNG,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

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I

JURISDICTIONAL STATEMENT

The appellant, Francis Jacob Young, was indicted by the Federal Grand Jury for the Central Division of the Southern District of California on January 12, 1966. The two-count indictment was brought under Title 18, United States Code, Section 474, and charged that on or about January 4, 1966, in Los Angeles County, the appellant and co-defendant Clarence Emmett Harrison possessed and transferred approximately 2150 counterfeit $10 federal reserve notes.

On February 9, 1966, the case proceeded to trial before the Honorable Irving Hill. On February 10, 1966, both defendants were found guilty on both counts of the indictment.

Appellant's Notice of Appeal was timely filed [C.T. 45]. 1/

The jurisdiction of the District Court was based upon Title 18, United States Code, Sections 474, 3231 and Rule 18 of the Federal Rules of Criminal Procedure. This Court has jurisdiction to review the judgment of the District Court pursuant to Title 28, United States Code, Sections 1291 and 1294, and Rule 37(a) of the Federal Rules of Criminal Procedure.

II

STATUTE INVOLVED

Title 18, United States Code, Section 474 provides in pertinent part as follows:

> "Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, uses such plate, stone, or other thing, or any part thereof, or knowingly suffers the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United

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1/ Refers to Clerk's Transcript of Record.

States by order of the proper officer thereof; or

"Whoever makes or executes any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or

"Whoever sells any such plate, stone, or other thing, or brings into the United States any such plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any intent, in either case, than that such plate, stone, or other thing be used for the printing of the obligations or other securities of the United States, or . . . .

* * *

"Whoever has in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; . . . .

"Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both."

III

QUESTIONS PRESENTED

A. Was There Adequate Probable Cause to Place Appellant Under Arrest?

B. Were the Counterfeit Federal Reserve Notes Obtained by Federal Agents by Means of a Search?

C. Was Appellant Denied His Right to Counsel?

D. Were Appellant's Admissions Adequately Corroborated So As To Be Deemed Trustworthy?

IV

STATEMENT OF FACTS

On January 3, 1966, Agent Frank Slocum of the United States Secret Service was made aware of a possible sale of counterfeit United States currency [R. T. 33]. 2/ Special Agent Pat Boggs advised Slocum that the Secret Service had received information that a Frank Young, described as being over six feet tall and around 250 pounds, was attempting to find a buyer for approximately $20,000 worth of counterfeit $10 federal reserve notes. The sale price for the counterfeit notes was to be approximately 25% of the face value of the currency [R. T. 34]. The Secret Service was also told that Frank Young had previously been in trouble for violating the Gold Reserve Act and was either on parole

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2/ Refers to Reporter's Transcript of Record.

or probation [R. T. 34]. Agent Slocum had previously participated in an arrest of Frank Young for violation of the Gold Reserve Act for which offense Young was convicted.

Agent Slocum proceeded to telephone the United States Probation Office in an attempt to find Frank Young's address. Slocum learned that the Probation Office hadn't heard from Young since the previous October [R. T. 35]. The investigation into the proposed sale involving Frank Young was never completed.

Later that same day, however, the Secret Service agents were made aware of another possible sale of counterfeit currency. Information was received by the Secret Service that there was a possible sale of approximately $20,000 worth of $10 notes for 25% of face value [R. T. 37]. The agents were told that Clarence "Slim" Harrison was offering the notes for sale to a Customs agent working undercover.

The next morning, at a meeting at the Los Angeles Police Department, the agents were advised that besides Harrison, there was an unknown person who might be involved, a Mr. X, the supplier of the counterfeit money who might show up during the sale. The agents were advised that the supplier, however, didn't want to meet the purchasers [R. T. 44]. At this time all of the agents and officers present were shown a photograph of the Frank Young known to Agent Slocum [R. T. 39]. The agents were told that information regarding another sale of counterfeit currency involving a Frank Young had been received and that the same amount of money seemed to be involved and the same denomination

had been mentioned.

At this meeting it was learned that the sale of the counterfeit currency was set to take place at approximately 4:30 P. M., at the Bank Cafe in San Pedro. The agents learned of the time and place of the transaction at approximately 1:30 P. M. [R. T. 168]. The agents knew that the transaction would involve actual counterfeit currency because earlier that morning Agent Miller had examined three sample notes supplied by Slim Harrison and determined that they were in fact counterfeit [R. T. 177].

During the meeting it was decided that an agent who did not know Frank Young should be placed inside the Bank Cafe to observe the transaction. Agent Ernest Luzania was picked to be inside the cafe specifically because he was not known to Frank Young [R. T. 40].

After the meeting at the Police Department all of the participating agents and officers held a final meeting at the Jumping Jack restaurant in Torrance. Details of the transaction and of arrest procedures were discussed and all agents were again shown a photograph of Frank Young [R. T. 181-182].

Agent Luzania entered the Bank Cafe in San Pedro at approximately 4:30 P. M. [R. T. 85]. Luzania sat at the bar as close to the old bank vault as possible so that he could observe any transaction taking place inside [R. T. 88]. Luzania observed Harrison and Agent Verusio talking together. Luzania then observed Harrison take out a set of keys and open the vault [R. T. 86]. Harrison was followed into the vault by Agent Verusio and the undercover informer who had set up the transaction, Clarence

Baumgarten. While Baumgarten, Verusio and Harrison were talking together, inside the vault, appellant "walked in the side door of the cafe, and he looked around, and walked toward the front of the cafe, looked around again, and walked back out the side entrance." [R. T. 87].

Agent Luzania then observed Harrison place a brown package wrapped in foil on the counter. Harrison next picked up the package and handed it to Agent Verusio [R. T. 88]. Then all three men walked out of the vault. The package was under Agent Verusio's arm. A signal was then given that the delivery had taken place. Agent Luzania proceeded to place Harrison under arrest. After arresting Harrison, Luzania went out the side door, looked down the street and saw appellant Young standing down the street looking at the cafe [R. T. 88].

Agent Slocum entered the cafe upon the prearranged signal and was told by Agent Luzania that "Young came in, and he's across the street." [R. T. 45]. Luzania then pointed across the street towards appellant. Slocum looked across the street and saw appellant Young. Apparently appellant saw Agent Slocum and recognized him, for in Slocum's words, "he did a left flank and started walking west." Slocum ran across the street and placed appellant under arrest [R. T. 46]. Agent Slocum then brought appellant back into the cafe. Upon returning to the cafe, Agent Slocum told Agent Miller to advise appellant of his constitutional rights [R. T. 64]. Slocum then proceeded to advise Harrison of his constitutional rights [R. T. 46].

After receiving his constitutional admonition, Harrison was permitted to telephone his attorney, Mr. Harry Root who arrived at the cafe within a matter of minutes [R. T. 48]. After Mr. Root arrived Slocum gave him the U. S. Commissioner's phone number and Root telephoned him.

When Agent Miller entered the cafe he feined an arrest of Agent Verusio and took the package from under Verusio's arm, later determined by him to contain $21,550 in counterfeit $10 bills [R. T. 187]. Miller then proceeded to thoroughly advise appellant of his constitutional rights according to Escobedo v. Illinois, 378 U.S. 478 (1963) [R. T. 192].

After being advised of their constitutional rights both defendants were then transported to the county jail where they remained overnight. The defendants did not leave the Bank Cafe until after 5:00 P. M. [R. T. 97].

At 9:30 A. M., the next morning, January 5, 1966, Agent Miller transported appellant from the county jail to the U. S. Court House. Miller again advised appellant of his constitutional rights [R. T. 197]. Miller asked appellant if he fully understood his rights, and appellant replied that he understood them [R. T. 217]. Appellant then went through the booking process in the Secret Service Office. After being booked appellant was taken before the United States Commissioner at shortly after 10:00 P. M. Appellant was again advised by the Commissioner of his constitutional rights according to Escobedo. Additionally, appellant was advised that if he could not afford an attorney one would be appointed for him

[R. T. 216].

Immediately after the Commissioner's hearing appellant was taken to the United States Marshal's Office. During a 10 to 15 minute conversation in the Marshal's Office, appellant Young told Agent Miller that he first learned of the counterfeit notes in August of 1966, but that he didn't see them until Christmas Day. Appellant further stated that he aged the notes by placing them in a tumbler with certain chemicals and some old rags. Young said he then took the notes to Harrison for safe-keeping. He said that he originally planned to buy gold with the genuine currency he would receive from the sale of the counterfeit currency [R. T. 205-206].

V

ARGUMENT

A. THERE WAS MORE THAN ADEQUATE PROBABLE CAUSE TO ARREST APPELLANT.

At the time that appellant was placed under arrest Agent Slocum was aware of the following facts and circumstances:

1. On January 3, 1966, the Secret Service was made aware of a possible sale of counterfeit currency.

2. The amount of counterfeit currency was said to be approximately $20,000 worth of $10 bills.

3. The asking price was said to be approximately $5,000.

4. A Frank Young was reported to be the individual offering the notes for sale.

5. Frank Young was described as over six feet tall and around 250 pounds, and was said to have been in trouble previously for violation of the Gold Reserve Act.

6. Agent Slocum had previously arrested Frank Young on the Gold Reserve Act charge and was aware of his prior conviction for that offense.

7. The Secret Service was later that same day made aware of another sale of approximately $20,000 worth of counterfeit $10 notes. The asking price again was approximately $5,000.

8. The Agents were advised by Agent Verusio that a Mr. X, the supplier of the counterfeit money, might show up on the premises during the sale but that he didn't want to meet the purchasers.

9. All participating agents were shown a photograph of Frank Young and alerted to the possibility that he was probably Mr. X, the supplier.

10. During the actual sale of the counterfeit currency between Agent Verusio and Clarence Harrison, appellant did in fact walk into the Bank Cafe, walk toward the front of the cafe, look around again, and walk out the side entrance.

11. After the sale had been consummated, appellant was seen to be standing on the sidewalk across the street from the Bank Cafe.

Clearly these facts and circumstances were within Agent

Slocum's knowledge at the time that he placed appellant under arrest and were more than adequate to warrant him in the belief that appellant was the supplier of the counterfeit currency.

> "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical, they are the factual and practical considerations of every day life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved."

Brinegar v. United States, 338 U.S. 160, 175 (1949).

More recently the Supreme Court has articulated the constitutional standard of probable cause in the following language:

> "Whether the arrest was constitutionally valid depends in turn upon whether, at the moment the arrest was made, the officers had probable cause to make it -- whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense."

Beck v. Ohio, 379 U.S. 89, 91 (1964).

At the time that the agents went to the Bank Cafe in San Pedro, they anticipated that a Frank Young, over six feet tall and around 250 pounds, would show up on the premises during the

course of a transaction involving the sale of $20,000 worth of counterfeit currency. All of the pre-conditions which Agent Slocum anticipated came to pass when appellant did in fact arrive upon the scene. There was more than adequate probable cause to arrest appellant as the supplier of the counterfeit notes.

Draper v. United States, 358 U.S. 307 (1959).

B. THE COUNTERFEIT FEDERAL RESERVE NOTES INTRODUCED WERE NOT THE PRODUCT OF A SEARCH.

Appellant makes the argument that there was a "search" and "seizure" which produced the counterfeit federal reserve notes. There is nothing in the record to sustain this position.

The record does, however, reveal what Judge Hill found to be a voluntary turn-over of the counterfeit currency to Agent Verusio by co-defendant Harrison [R. T. 278]. Agent Luzania testified that he observed co-defendant Harrison hand the package containing the counterfeit currency to Agent Verusio [R. T. 88]. Agent Verusio testified that co-defendant Harrison was the one who actually ripped open the package so that Verusio could have Baumgarten count the money to determine whether the proper amount was present [R. T. 142]. The package was actually taken by Agent Miller from under Agent Verusio's arm [R. T. 183]. The record is clear that there was in fact no search or seizure which produced the counterfeit currency. Co-defendant Harrison voluntarily turned over the package to undercover Agent Verusio, and appellant

should not now be heard to complain that co-defendant Harrison was deceived into believing that Verusio and Baumgarten were in fact bona fide purchasers of the contraband.

The voluntariness of the turn-over of the package containing the counterfeit currency is not vitiated because the undercover agent misrepresented his true identity and purpose. Nor was the agent's entry into the bar an unlawful intrusion -- as was recently held by the Supreme Court in Lewis v. United States, 384 U.S. 206, 211 (1966):

> "But when, as here, the home is converted into a commercial center to which outsiders are invited for purposes of transacting unlawful business, that business is entitled to no greater sanctity than if it were carried on in a store, a garage, a car or on the street. A Government agent, in the same manner as a private person, may accept an invitation to do business and may enter upon the premises for the purposes contemplated by the occupant."

Finally, appellant argues that a warrant should have been obtained to search the premises of the Bank Cafe; as has been argued above, no search was ever made. Even if there had been a search there is no rule of law requiring agents to procure a warrant, either an arrest or search warrant, for a crime not yet committed. The constitutional standard under the Fourth Amendment is one of reasonableness; there is no rule requiring a warrant

in all cases merely because there may be time to obtain one. United States v. Rabinowitz, 339 U.S. 56 (1950).

C. APPELLANT WAS NOT DENIED HIS RIGHT TO COUNSEL.

Appellant argues that he was denied his right to counsel by the Secret Service agents. Yet the record indicates, and appellant concedes (p. 22, Appellant's Brief), that appellant was given full Escobedo warnings before he made his damaging admissions. Furthermore, even though Miranda v. Arizona, 384 U.S. 436 (1966), is not applicable to the case at bar, see Johnson v. New Jersey, 384 U.S. 719 (1966), the United States Commissioner did in fact advise appellant of his constitutional rights in accordance with the more stringent requirements of Miranda [R.T. 216, 237, 270].

The record is clear that appellant was advised of his full constitutional rights on not one but three separate occasions. The record also indicates that Agent Miller inquired whether appellant understood his constitutional rights and appellant responded affirmatively that he did understand his rights [R.T. 217]. The record is barren of any indication whatsoever that appellant was coerced or compelled, physically or psychologically to make the admissions he did. Rather, we see the picture of a defendant who after having been made aware of his constitutional rights spontaneously acknowledges his guilt without force or compulsion or promise of reward.

Wong Sun v. United States, 371 U.S. 471 (1963);

Burke v. United States, 328 F.2d 399 (1st Cir. 1964);

United States v. Mitchell, 322 U.S. 65, 70 (1944).

The record fails to show that appellant at any time requested either the appointment of counsel or that counsel be present during his discussion with the agents. Appellant's admissions after being advised of his right to have appointed counsel indicates as clearly as anything could that he was desirous of waiving his right to counsel and spontaneously cooperating with the agents.

After three constitutional warnings Secret Service Agent Miller was not required to again advise appellant of his rights in the United States Marshal's Office:

> "The principles announced today deal with the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation while in custody at the station or otherwise deprived of his freedom of action in any way."

Miranda v. Arizona, supra, at p. 477.

See also: Good v. United States, No. 21,062 (9th Cir. May 31, 1967), slip sheet opinion, and

Kaplan v. United States, No. 20,728 (9th Cir. March 1, 1967), slip sheet opinion.

D. APPELLANT'S STATEMENTS WERE ADEQUATELY CORROBORATED AS TO TRUSTWORTHINESS.

After appellant had been thoroughly advised of his constitutional rights on three occasions he told Agent Miller that he had first learned of the counterfeit notes in question in August of 1966, but that he first saw the notes on Christmas Day of 1966. Appellant also related how he aged the notes by placing them into a tumbler and how he took the notes to co-defendant Harrison. Finally, appellant told Agent Miller what he planned to do with the proceeds from the sale of the counterfeit currency. Appellant's admissions thoroughly implicated him in the transaction between co-defendant Harrison and undercover agent Verusio. His admissions clearly indicated his participation in the transaction, his knowledge of the sale and his position as the supplier of the notes.

The question to be answered is, were these admissions corroborated so as to render them trustworthy? The federal rule as to the manner in which an admission must be corroborated is set forth in Opper v. United States, 348 U.S. 84 (1954), and Smith v. United States, 348 U.S. 147, 156 (1954). Basically the rule is that all of the elements of the crime charged must be established by independent evidence or corroborated admissions. The extent of the required corroboration is that there be evidence independent of the statements which tends to establish their trustworthiness.

> "All elements of the offense must be established by independent evidence or corroborated

admissions, but one available mode of corroboration is for the independent evidence to bolster the confession itself and thereby prove the offense 'through' the statements of the accused."

Smith v. United States, supra, at p. 156.

"The corroborative evidence need not be sufficient, independent of the statements, to establish the corpus delicti. It is necessary therefore, to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement."

Opper v. United States, supra.

A careful examination of the record discloses more than enough evidence, independent of appellant's admissions, to establish the trustworthiness of those statements. On January 3, 1966, Secret Service agents were told that a Frank Young, who had previously been in trouble for violation of the Gold Reserve Act was attempting to dispose of approximately $20,000 worth of counterfeit $10 notes for approximately $5,000. Later the agents were made aware of the transaction between Harrison and undercover Agent Verusio. The similarity between the two transactions was undeniable; the same quantity of counterfeit $10 bills for the same asking price. Also, it was known that Harrison's supplier may be present during the transaction.

Finally, appellant's brief appearance on the scene during the course of the transaction and his exit to a supposed place of safety across the street lend the final air of trustworthiness to his statements. It would be the height of folly to suppose that appellant just happened to arrive on the premises at the exact moment when the sale occurred unless he had been previously advised of this transaction which was set up on relatively short notice. Clearly, the evidence independent of appellant's admissions could have led the trier of fact to have concluded but one thing, that appellant was on the premises only because he was in fact the supplier of the counterfeit currency and that appellant's admissions were to be believed.

VI

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of conviction of appellant should be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Anthony Michael Glassman

ANTHONY MICHAEL GLASSMAN